



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 13, 1998

Mr. Roland Castaneda  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR98-1925

Dear Mr. Castaneda:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117366.

The Dallas Area Rapid Transit ("DART") received a request for information concerning an investigation conducted by DART. You submitted to this office as responsive to the request a copy of handwritten interview notes and a copy of a complaint. You assert that these documents are protected from disclosure on the basis of common-law and constitutional privacy as protected under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy.

Information is protected from disclosure on the basis of common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and

education. *See id.* The second interest is the interest in avoiding disclosure of personal matters.

The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law, as the material at issue must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). We will consider your argument that the submitted documents are protected from disclosure on the basis of common-law privacy.

The records at issue concern an investigation of allegations of sexual harassment. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* at 525.

The court in *Ellen* did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity. However, the court held that the public possesses a legitimate interest in full disclosure of the facts surrounding employee discipline in this type of situation. *Id.* at 525. We believe that there is a legitimate public interest in the identity of public employees accused of sexual harassment in the workplace and the details of the complaint, regardless of the outcome of the investigation. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees); 423 at 2 (1984) (scope of public employee privacy is generally narrow).

In this situation, there is no summary about the allegations or conclusion showing the result of the investigation, which is ongoing. However, there is a public interest in knowing the details of the allegation of sexual harassment in the workplace, by a public employee. We conclude that, in accordance with *Ellen*, DART must redact all identifying information concerning the victims of and witnesses to the alleged harassment. The remaining information must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 117366

Enclosures: Submitted documents

cc: Mr. Larry Campbell  
7917 Wayne Way  
Rowlett, Texas 75088  
(w/o enclosures)